**Centralized and Joint Operational Activities:   
Introductory Guidance**

**Background**

Many PCAs-HCCNs centralize and integrate certain functions and responsibilities previously performed by their members on an individual basis. The range of centralized and joint operational activities conducted by PCAs-HCCNs on behalf of their members is very broad and the legal considerations regarding such activities depend upon the requirements of the specific activity being performed.

If, for example, a PCA-HCCN intends to engage in group purchasing, the PCA-HCCN must consider liability under the federal Anti-Kickback Act.[[1]](#footnote-1) If a PCA-HCCN intends to act on behalf of its health center members with respect to HIPAA covered transactions (e.g., billing and claims processing), HIPAA requires that the HIPAA-covered entity (in this case, each participating health center) execute a Business Associate Agreement with the PCA-HCCN to ensure the privacy and confidentiality of any patient information obtained by the PCA-HCCN in performing services for the health centers.

In addition, there are certain legal and policy requirements that arise in connection with the provision of centralized credentialing services by the PCA-HCCN. In particular, if a PCA-HCCN intends to provide credentialing services to its member health centers, the PCA-HCCN needs to be familiar with the credentialing requirements of the Bureau of Primary Health Care (“BPHC”), the Joint Commission and the National Committee for Quality Assurance (“NCQA”).

* BPHC: HRSA policy on credentialing and privileging can be found in the two Policy Information Notices (PINs):
* [PIN 2001-16 *Credentialing and Privileging of Health Center Practitioners* (July 17, 2001)](http://www.healthcentercompliance.com/sites/healthcentercompliance.com/files/pca-toolkit-file-downloads/pin-2001-16.pdf)
* [PIN 2002-22 *Clarification of Bureau of Primary Health Care Credentialing and Privileging Policy Outlined in Policy Information Notice 2001-16* (July 10, 2002)](http://www.healthcentercompliance.com/sites/healthcentercompliance.com/files/pca-toolkit-file-downloads/pin-2002-22.pdf)

These PINs require health centers to credential and privilege each of their licensed or otherwise certified practitioners (both employed and contracted) prior to furnishing patient care services and to re-privilege at least every two years (which process necessarily entails re-checking credentials, including primary source verification of expiring or expired credentials). While not specifically identified in the PINs, an important part of the credentialing process requires a review of the Office of Inspector General (“OIG”) list of individuals and entities excluded from participating in federal health care programs.

* The Joint Commission’s ambulatory care standards require health care organizations to review “core criteria” such as current licensure, relevant education, training, or experience, current competence and performance every two years. The Joint Commission also requires that each provider’s license to practice be verified with the relevant state licensing authority.
* Recognition under the NCQA Patient-Centered Medical Home (“PCMH”) initiative or other accreditation, includes specific requirements that should be considered prior to developing centralized credentialing services.

Regardless of the type of centralized or joint operational activity performed by the PCA-HCCN, it is important to consider the limitations or restrictions on the federal funds the PCA-HCCN receives from HRSA and to ensure that such funds are not used to support unallowable activities. Typically, HRSA funds are awarded to support technical assistance and training activities for both existing Section 330 grantees and FQHC look-alikes as well as other safety net organizations. The BPHC Primary Care Association Guide 2012-2013[[2]](#footnote-2) states that the PCA-HCCN should,

[S]upport the provision of high quality patient care and enhance the operations and clinical and financial performance of existing health centers in the state/region through *annual statewide/regional Performance Improvement T/TA activities* as outlined in the application or negotiated with the Project Officer (two required areas). (emphasis added)

While joint credentialing activities support high quality patient care and enhance operations for the PCA-HCCN’s members, technically such activities would be considered a “product” offered by the PCA-HCCN rather than technical assistance and training. Further, activities supported by HRSA funds must be available without regard to whether an organization is a member of the PCA-HCCN, “recipients of this co-operative agreement should provide equal access to T/TA services without regard to State/Regional Primary Care Association membership.”[[3]](#footnote-3)

**Advice and Recommendations[[4]](#footnote-4)**

Each centralized and joint operational activity presents its own set of legal rules and requirements. For example, because centralized billing services require the PCA-HCCN to execute a Business Associate Agreement with each participating health center, PCAs-HCCNs should be familiar with HIPAA’s privacy and confidentiality requirements, as amended from time to time. In particular, it is important that PCAs-HCCNs stay up-to-date with current rules regarding the responsibilities and potential liabilities of business associates, as well as what provisions must be included in the Business Associate Agreement (and amend it accordingly). For example, although the PCA-HCCN itself is not a covered entity, the Business Associate Agreement should require the business associate (in this case, the PCA-HCCN) to comply with HIPAA. Further, under current HIPAA rules, the business associate may be directly liable for a HIPAA breach.

###### [Terms for a business associate agreement](http://www.healthcentercompliance.com/subscriber/pca-toolkit/volume-2/855): Checklist

Because the BPHC recommends that credentialing occur prior to furnishing patient care services, it is best to design a centralized credentialing service under which the verification process is completed before an individual’s hiring is final (i.e., an offer has been extended pending verification of the individual’s credentials). Further, while all credentialing should be conducted in accordance with the requirements in BPHC PIN 2001-16 and 2002-22, the PCA-HCCN should also keep in mind that these requirements are a minimum or “floor” – as such, the PCA-HCCN could elect to obtain additional information.

* Credentialing and privileging: Sample policy and procedure

In developing and planning a joint or centralized function on behalf of its members, the PCA-HCCN should ensure that it is not using any of its HRSA funds for impermissible/unallowable uses. It is important to review both the current BPHC Primary Care Association Guide as well as the agreed upon workplan between the PCA-HCCN and BPHC prior to using any HRSA funds to support such activities. Because most joint or centralized operational activities fall outside of “technical assistance and training,” and may be available only to PCA-HCCN members, more than likely such activities would not be considered permissible/allowable activities that can be supported with HRSA funding, and the PCA-HCCN will be required to obtain other sources of funds (such as participation fees from the members) to support centralized/joint operational functions. Further, PCAs-HCCNs should ensure appropriate documentation to demonstrate that they are not using the HRSA funds to support impermissible activities. The PCA-HCCN should be able to verify that joint and centralized operational activities are fully supported through non-HRSA funding or risk a potential disallowance.

Regardless of the type of centralized or joint activity conducted by the PCA-HCCN, it is advisable that the PCA-HCCN and each member participating in the activity execute a Participation Agreement. Under a centralized program, the PCA-HCCN itself would be the purchaser of products, systems, and other equipment, as well as the provider of related administrative and support services and personnel, integral to such centralized functions. Since the PCA-HCCN may be making large financial and personnel investments, it should execute an agreement with its members, setting forth each party’s expectations and responsibilities with respect to such investments. In general, the Participation Agreement should contain provisions that ensure each party's accountability and long term commitment to the joint purchasing and integrated services program.

###### [Terms for a participation agreement](http://www.healthcentercompliance.com/subscriber/pca-toolkit/volume-2/857): Checklist

If not all members want to participate in the shared programs, products and/or services, the PCA-HCCN and the participating members may consider establishing a separate corporation which would be responsible for operating the joint activities. An agreement to establish a new organization should address, among other things:

1. The coordination of joint activities;
2. Governance and decision-making, including Board composition;
3. Annual cash and in-kind contributions by each party;
4. Termination of the entire collaboration, as well as individual participation; and
5. Obligations upon individual termination, including penalties (if any).

1. See [Group purchasing programs](http://www.healthcentercompliance.com/subscriber/pca-toolkit/volume-2/846): Introductory guidance. [↑](#footnote-ref-1)
2. [Bureau of Primary Health Care Primary Care Association Guide 2012-2013 (2012), p. 2](http://www.healthcentercompliance.com/sites/healthcentercompliance.com/files/pca-toolkit-file-downloads/bphc-primary-care-association-guide-2012-2013.pdf). [↑](#footnote-ref-2)
3. Id. [↑](#footnote-ref-3)
4. The Authors of these materials include attorneys at the law firm of Feldesman Tucker Leifer Fidell LLP. The advice and recommendations consist of general guidance based on federal law and regulations and do not necessarily apply to all R/SPCAs under all facts and circumstances. Further, these materials do not replace, and are not a substitute for, legal advice from qualified legal counsel. [↑](#footnote-ref-4)